IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1600 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMUBAI IBRAHIMBHAI

Versus

FAKRUDDIN ABBULHUSAIN GHADIYALI

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Appearance:

MR NK MAJMUDAR for Petitioner

MR RN SHAH for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/12/2000

ORAL JUDGEMENT

#. This is landlord's revision under sec.29(2) of the Bombay Rent Act.

#. The landlord, revisionist filed a suit for eviction of the tenant, respondent on three grounds. The first was that, the respondent was in arrears of rent for a period exceeding six months, which he failed to pay within a month of service of notice of demand. The second was that, the premises in suit was reasonably and bonafidely required by the landlord for his personal use

and occupation. The third was that, the tenant, without any reasonable cause, failed to use the suit accommodation for a continuous period of six months before the institution of the suit.

#. The suit was resisted by the tenant, respondent denying all these allegations.

#. The trial Court found that the tenant, respondent was not in arrears of rent for more than six months, which he failed to pay within a month of service of notice of demand. On the point of bonafide requirement, the trial Court found that the requirement of the landlord was reasonable and bonafide, and comparing the hardships between the landlord and the tenant, it was found by the trial Court that the landlord would suffer greater hardships, if decree for eviction of the tenant is not passed. The trial Court further found that, the establishment of the defendant remain closed for a period of more than six months before institution of the suit. As such, on these two grounds, the suit for eviction was decreed.

#. An appeal was preferred by the tenant, which was allowed and the decree for eviction was set aside. It is, therefore, this revision by the landlord.

#. I have heard Shri NK Majmudar, learned counsel for the revisionist and Shri RN Shah for the respondent.

#. So far as the concurrent finding of the two courts below on the point of arrears of rent is concerned, that requires no interference. This finding is based on proper appreciation of evidence on record and no perversity or illegality is found in this finding. Consequently, on this ground, decree for eviction could not be passed.

#. The first point for consideration is, whether the landlord required the suit premises reasonably and bonafidely for his personal use. The trial Court accepted the plea of the landlord on this point, and comparing the hardships of the two sides, concluded that the landlord would suffer greater hardships, if decree for eviction is not passed. This finding was reversed by the lower appellate Court. The lower appellate Court, after considering the entire material on record, namely, the oral and documentary evidence, concluded that the trial Judge has not correctly appreciated this point and he erred in coming to the conclusion that the plaintiff has proved that he required the suit premises for the purposes of starting business by her husband in it. The

appellate Court is empowered to reappreciate and reassess the evidence on record and come to finding other than that recorded by the trial Court. Such exercise may not be permissible for the revisional Court, but the appellate Court has certainly got jurisdiction to go into entire material on record and record its own finding setting aside the finding of the trial Court. That has been done by the lower appellate Court in the instant case without committing any illegality. Consequently, this finding can not be interfered in revision. If the requirement of the landlord or the landlady was not found reasonable and bonafide, there arose no occasion for comparing the hardships of the landlord and the tenant. Further, as a measure of caution, the appellate Court has considered the question of comparative hardship of the two sides and it found that the balance of inconvenience and hardship is also in favour of the defendant, namely, the tenant. This finding also is based on proper appreciation of the evidence on record and the circumstances of the case. Consequently, on this ground, the lower appellate Court refused to grant decree for eviction.

#. There is third ground on which the landlord's claim for eviction on grounds of bonafide and reasonable requirement was refused by the lower appellate Court and the third ground was based on explanation to sec.13(1)(g) of the Act, which reads as under :-

"Explanation : For the purpose of clause (g) of sub-section (1) :

(a) A person shall not be deemed to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy or the first day of January 1964, whichever is later, or if the interest has devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January 1964, whichever is later."

##. The lower appellate Court found as fact that the suit premises was gifted to the landlady through gift deed dated 23rd March, 1976. Consequently, she acquired interest in the premises through gift deed after 1-1-1964.

##. The aforesaid explanation contemplates two situations. One is, where a person acquires interest in the premises on a date prior to the beginning of the

tenancy or the first day of January 1964, whichever is later. The second situation is, where such interest devolves on him either by inheritance or by succession at a date prior to the beginning of the tenancy or the first day of January 1964, whichever is later. The present case is not covered by the second situation. It is not a case of inheritance testate or intestate by the plaintiff, landlady. It is not a case of inheritance or succession or by inheritance through will. On the other hand, acquisition of interest in the property was set up through gift deed dated 23-3-1976. It was certainly a date after 1-1-1964, as well as, after 17-8-1947, namely, the date of commencement of tenancy. Shri NK Majmudar, learned counsel for the revisionist, however, contended that the first portion of the explanation (a) is confined to acquisition of interest only by purchase of property and not acquisition of interest through gift. In support of his contention, he has again referred to the three cases, which were cited on behalf of the landlord before the lower appellate Court.

##. In A.S.RUBEN v. NARAYAN MORESHWAR AIR 1953 Bombay 174 vires of explanation (a) to sec.13(1)(g) of the Bombay Rent Act was challenged. The vires of this section was upheld. It was a case where the landlord acquired interest in the property by purchase. While upholding the vires of the aforesaid explanation, it was nowhere held that acquisition of interest under this explanation is restricted to acquisition of interest by purchase only and not to acquisition of interest by any other mode like gift, grant, etc. Similarly, in case of CHARANJIT LAL CHOWDHRI v. UNION OF INDIA 53 BLR 499, it was never held that acquisition of interest under this explanation is confined to acquisition by purchase only.

##. The case of SHAH PRAVINCHANDRA HARAKHCHAND v. THE STATE OF GUJARAT, 16 GLR 40 was rightly distinguished by the lower appellate Court. It was a case where vires of explanation to sec.13(1)(g) was challenged and it was held by this Court that the aforesaid explanation is intravires and not ultravires. It was never held in this case that, acquisition of interest as contained in explanation (a) is confined to acquisition of interest by purchase alone. No doubt, it was a case where the landlord claimed interest by purchase of property but, that does not mean that this Court has given verdict that the words "acquisition of interest" are confined to sale only and not to any other mode of acquisition of interest. Gift is also one of the modes, in which interest in the property can be acquired. Like wise, grant can also be another mode in which interest in the

property can be acquired. If, acquisition of interest in the property is confined to acquisition by purchase only then, it would not amount to interpreting the explanation but reenacting the explanation, which is not the function of the Court. What the legislature intended in the explanation is that, a person shall not be deemed to be landlord unless he has acquired interest in the premises at a date prior to the beginning of the tenancy or after 1-1-1964. If the legislature would have intended to confine the acquisition of interest by purchase only, it should have used the words "acquisition by purchase only" and should have excluded acquisition of interest by any other mode. In my opinion, gift is also one of the modes of acquisition of interest in the property, and since interest in the property was acquired through gift after 1-1-1964, this explanation is applicable, and for the purposes of seeking eviction under sec.13(1)(g), the plaintiff, revisionist can not be said to be landlady entitled to claim eviction of the tenant on grounds of reasonable and bonafide requirement of the suit premises. Consequently, the lower appellate Court committed no illegality in reversing the finding of the trial Court on this point.

##. The second point for consideration is, whether the premises was not used by the tenant for a continuous period of six months before the institution of the suit. Shri NK Majmudar, learned counsel for the revisionist has drawn my attention to the findings of the trial Court and has contended that the findings of the trial Court are correct, whereas the findings recorded by the lower appellate Court are perverse and illegal. He has tried to emphasis that the relevant period is the period of six months before the institution of the suit and the relevant date is the date of institution of the suit. According to his contention, it has to be seen, whether on the date of institution of the suit, the tenant had not used the premises for a continuous period of six months before the institution of the suit. He has referred to the findings of the trial Court that there was change of establishment and the new establishment came subsequently whereas, the old establishment remained closed for a period of more than six months before the institution of the suit. Hence, decree for eviction was required to be passed. He has also referred to the electricity bills, in which, bills were submitted for minimum consumption charges. However, the lower appellate Court has considered all these aspects and has also considered the 'inspection note' prepared by the Shop Inspector on various dates from 10-9-1963 to 31-12-1977 and the last date of inspection was

31-12-1977. Ex.129 was referred by the lower appellate Court. Unless the shop was open, the Shop Inspector could not have inspected the shop on various dates between 10-9-1963 to 31-12-1977. This also shows that the shop was not closed as contained by Shri Majmudar. In the inspection notes, it was not mentioned that the shop remain closed. Shri Majmudar further contended that there was change of business which gives indication that the shop remained closed. I do not find force in this contention. Previously, the business of repairing wrist watches and spectacles was done, subsequently business of spectacles was given up but, business in watches continued. Consequently, it can not be said that, all of a sudden, new business was started after closure of old business. The lower appellate Court has also considered the time lag in running the business after the demise of the father of the defendant. Likewise, the lower appellate Court has considered not only the electricity bills of minimum charges but, also electricity bills of charges other than minimum charges. If, electricity was not consumed, such electricity bills could not have been served on the tenant. It is possible that the Meter Reader, on some occasion, might have found the shop closed on account of which meter reading could not be recorded, as a result of which minimum charges were shown in the bill. The lower appellate Court further found from the evidence that the business of defendant's son Hakimuddin was started on 2-1-1974 and that the business was running continuously in the suit shop from 10-9-1963 to 31-12-1977. The lower appellate Court further found that, even after 2-1-1978, this business was either done by the father of the defendant or by his son. The lower appellate Court categorically concluded that the suit shop was never closed and the business was running in the said shop. Consequently, it was justified in reversing the finding of the trial Court on the point that the defendant had not used the suit premises for a continuous period of six months before the institution of the suit.

##. For the reasons stated above, the landlord could not establish any ground for eviction of the tenant. As such, the decree for eviction was liable to be refused and it was rightly refused by the lower appellate Court. I, therefore, do not find any merit in this revision, which is hereby dismissed with no order as to cost.

December 15, 2000. [ D.C. Srivastava, J.]